

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

MICHAEL DEWAYNE LAIRY,)
Petitioner,)
v.) No. 3:20-cv-00144-RLY-MPB
UNITED STATES OF AMERICA,)
Respondent.)

Order Appointing Counsel and Directing Further Development

Petitioner Michael Lairy's motion for relief pursuant 28 U.S.C. § 2255 is under advisement.

A review of the motion and the response reveals that appointment of counsel for the further development of Mr. Lairy's claims is necessary.

I. Issue Requiring Further Development

Among other things, Mr. Lairy argues in support of his § 2255 motion that when he "was sentenced the AUSA and counsel may have been aware that Mr. Lairy's prior conviction was not a valid predicate offense under [the Armed Career Criminal Act]." Dkt. 12 at 6. He then references his prior escape conviction and "the drug priors." *Id.*

While Mr. Lairy's sentence was not enhanced based on his previous escape conviction, a review of his presentence investigation report reveals that he was understood to be subject to a statutory 15-year mandatory minimum sentence because of his prior convictions for dealing in cocaine. Cr. Dkt. 30 ¶ 23. Indiana convictions for dealing in cocaine have since been held not to qualify as serious drug offenses under the ACCA. See

Alston v. United States, 2:16-cv-00016-JMS-DLP, 2021 WL 82963, at *2 (S.D. Ind. Jan. 11, 2021).

The United States did not address this argument, contending that it is too vague and unclear to confront. The court agrees that this argument requires further development.

Accordingly, pursuant to Rule 8 of the *Rules on Motions Attacking Sentence under Section 2555*, the Indiana Federal Community Defenders Office, Inc. ("IFCD") is hereby appointed to represent the petitioner in this action. The IFCD shall have **through November 23, 2022**, in which to appear. Should the IFCD be unable to represent the petitioner, substitute Criminal Justice Act counsel may appear on his behalf pursuant to 18 U.S.C. § 3006A(a)(2)(B).

II. Further Proceedings

As discussed above, counsel is appointed to represent Mr. Lairy to further develop his argument that his sentence was improperly enhanced. Counsel is directed to supplement the § 2255 motion as described above. The supplement should not simply adopt Mr. Lairy's argument, but should provide a thorough analysis of the claim the Court has identified.

Counsel shall file an appearance by **November 23, 2022** and shall file a supplemental brief by **January 3, 2023**. The United States shall have **twenty-eight days** to respond and counsel shall have **fourteen days** to reply.

IT IS SO ORDERED.

Date: 10/28/2022



RICHARD L. YOUNG, JUDGE
United States District Court
Southern District of Indiana

Distribution:

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